

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Before the court is Plaintiffs' motion for relief (#100<sup>1</sup>). On July 29, 2008, this court filed an order denying Plaintiff's motion for reconsideration (#99). In that order, the court construed Plaintiffs' motion for reconsideration as pursuant to Federal Rule of Civil Procedure 60 instead of pursuant to Rule 59(e) because the motion was filed more than ten days following the grant of summary judgment against Plaintiffs.<sup>2</sup> (July 29, 2008, Order (#99) at 3 n.4.) Consequently, the motion for reconsideration did not toll the time for appeal as it would have under Rule 59(e).

<sup>1</sup>Refers to court's docket number

<sup>2</sup>A Rule 59(e) motion must be filed within ten days of the entry of judgment. Fed. R. Civ. P. 59(e).

1       *United States v. Nutri-cology, Inc.*, 982 F.2d 394, 397 (9th Cir.1992).

2              Plaintiffs now correctly argue that the period between entry of judgment and the filing of  
3 the motion for reconsideration was not longer than ten days. Under Rule 60(a), “[t]he court may  
4 correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in  
5 a judgment, order, or other part of the record.” Fed. R. Civ. P. 60(a). Here, the court granted, and  
6 the clerk entered, summary judgment against Plaintiffs on March 27, 2008 (#95). On April 10,  
7 2008, Plaintiffs filed their motion for reconsideration. Rule 6(a) provides that courts should  
8 exclude weekends and the day of the entry of judgment when calculating the period of time allowed  
9 for a Rule 59(e) motion. *See* Fed. R. Civ. P. 6(a). Excluding these days, Plaintiffs filed their  
10 motion for reconsideration on the tenth day allowed by Rule 59(e). Therefore, the motion was  
11 timely under Rule 59(e), and the time for appeal is consequently tolled.

12              Notably, since the analyses under both Rule 59(e) and Rule 60 are identical, *Jones v.*  
13 *Aero/Chem Corp.*, 921 F.2d 875, 878 (9th Cir. 1990), the court’s correction does not affect the  
14 substance of the order.

15              IT IS THEREFORE ORDERED that Plaintiffs’ motion for relief (#100) is hereby  
16 GRANTED. The court’s order (#99) is modified accordingly and Plaintiffs’ time for appeal is  
17 tolled until entry of this order.

18              IT IS SO ORDERED.

19              DATED this 7th day of August 2008.



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21              LARRY R. HICKS  
22              UNITED STATES DISTRICT JUDGE  
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